

ITB 071I4001011
Voting Systems – Department of State
JEC Synopsis

BACKGROUND INFORMATION

The Federal Help America Vote Act (HAVA) was enacted in October 2002 in response to concerns regarding the way elections were conducted across the country. HAVA mandates that voting systems used in Federal elections have certain characteristics. In addition, Michigan Public Act (PA) 91 of 2002 mandates a uniform method of voting in the State. On August 4, 2003 Secretary of State Terri Lynn Land announced the selection of a uniform voting system in Michigan. It was determined that an optical scan voting system that uses “precinct-based” tabulation technology best serves the needs of the State.

It merits note that as a result of HAVA and PA 91, a number of voting systems across the state must be replaced. The replacement process will occur in three phases. In Phase I, jurisdictions that currently use punch card ballots, lever machines, paper ballots, and “central count” optical scan systems will receive replacement equipment. In Phase II, jurisdictions that currently use Direct Recording Electronic (DRE) voting systems and some “precinct-based” optical scan systems purchased prior to 2000 will receive replacement equipment. Phase III, not included in this ITB, will provide HAVA-compliant disability voting devices for each polling location in the State.

PURPOSE

The Information to Bid (ITB) solicited proposals and costs for several optical scan voting system components, including tabulators, Election Management System (EMS) software, post-warranty maintenance, vendor-provided ballot printing, vendor-provided programming services, and a variety of other optional items. The intent of the process was to use the State’s purchasing power to establish favorable state-wide prices in all categories that would be applied to all voting systems. Prices were also to be extended to counties and local jurisdictions for all optional and additional items.

Currently in the State of Michigan, vendors who wish to sell voting equipment must submit the equipment to the Michigan Department of State, Bureau of Elections for testing. The Bureau of Elections then makes a recommendation to the State Board of Canvassers which must certify the equipment for use in Michigan before a vendor may sell voting equipment in the State.

All three vendors who submitted a bid response to this ITB are currently certified by the State to sell voting equipment in the State of Michigan. Approximately 65% of the State currently utilizes a “precinct-based” optical scan system. The purpose of this ITB was to qualify as many of the currently certified vendors as possible while obtaining the best value for the State of Michigan and local jurisdictions. From the list of approved vendors, each county, with the involvement of the cities and townships within the county, will choose a voting system to be used countywide.

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VENDORS WHO RESPONDED TO THE RFP:

1. Diebold Election Systems, Inc. (DESI)
2. Election Systems and Software, Inc. (ES&S)
3. Sequoia Voting Systems, Inc.

SELECTION CRITERIA:

Responses to this ITB were evaluated based upon the bidder's current ability to provide the highest level of quality services that meet the requirements and goals of this ITB and the needs of Michigan's elections community and to provide the best value to the State.

The committee met and reviewed the proposals submitted to determine which vendors passed or failed the requirements of the ITB. The evaluation was a three-step process. Step I consisted of Mandatory Proposal Requirements. Those were as follows:

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| Step I – Mandatory Proposal Requirements – Pass/Fail |
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1. The Bidder shall state their unconditional acceptance of the indemnification and insurance requirements as listed.
2. The Bidder shall have a minimum of three years experience in the sale, delivery and support of electronic voting systems for use in public elections.
3. The Bidder shall certify in their proposal that their Project Manager shall not change during the first 180 days of the contract.
4. The Bidder shall maintain a staff and office in Michigan during the equipment warranty period sold under this contract.
5. The Bidder shall clearly demonstrate and document within their technical proposal and the Executive Summary of their technical proposal that the Voting System they wish to propose to the State for the purpose of this ITB satisfies the requirements of this ITB. Executive Summary shall include reference to the page number(s) in the proposal where such evidence can be found.
6. All voting systems not currently approved for use in Michigan elections may be considered if the voting system(s) is approved and can meet the delivery timelines described under Section II-C TASKS. All voting systems shall be approved in accordance with the provisions of Michigan Compiled Law, as outlined in Appendix B, prior to the Bidder receiving status as an approved voting system Contractor under the terms of this proposal.
7. All EMS shall be ITA approved. All EMS not currently approved by an ITA may be considered if the EMS is approved and can meet the delivery timelines described under Section II-C TASKS. In addition, all EMS shall be approved by the DOS in accordance with the provisions of Michigan Compiled Law as outlined in Appendix B, prior to the Bidder receiving status as an approved voting system Contractor under the terms of this proposal.

After obtaining unconditional agreement to items 1-7 from all three vendors through the clarification process, it was determined by the JEC that all three companies passed the minimum mandatory requirements advancing to Step II.

While all three vendors have passed Step I, Sequoia Voting Systems, Inc. has been passed with a contingency on obtaining ITA (Independent Testing Authority) approval on BPSII software (a component of its EMS) in accordance with Item #7 listed above. Sequoia will not be permitted to sell any equipment or software until ITA approval of BPSII is obtained and can meet the delivery timelines described under Section II-C TASKS.

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| Step II - Management Summary |
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Only those vendors meeting the mandatory minimum requirements would proceed to Step II. The requirements for Step II are as follows:

1. Capability and Qualifications of Organization – Pass/Fail

The written proposal should indicate the ability of the Contractor to meet the terms of the project/program, quality, and recency of projects similar to that described in the ITB, understanding of the problem and completeness of the response to Section IV Information Required from Bidders.

This section of the proposal will be evaluated using the following criteria:

- a. The Contractor's understanding of the purpose of this ITB.
- b. The Contractor's understanding of the overall project's tasks and objectives.
- c. Project constraints and approach to overcoming these.
- d. Project risks and approach to managing them.
- e. The proposed Contractor teaming structure and the role and responsibilities of each teaming partner.
- f. A summary of the proposal shall include an overview of the approach to completing the tasks identified in Section II-C as well as the deliverables described in Section II-D.
- g. A description of how the staff resources required by this ITB will be provided. Include timeframes for providing these resources.
- h. A description of the method to be used to administer the project from a corporate level.
- i. The name, title, telephone number, FAX number, mailing address, email address and work hours of a person who will be available to answer any questions concerning your proposal.

- j. Bidders shall discuss the accommodation of alternative ballot printing solutions in their response. Michigan election law requires that absent voter ballots be available 45 days before a State election; for all other elections the deadline is twenty days. Further, it is a requirement that clerks test all ballots and programs that will be used to tabulate the ballots prior to issuance. An objective of the ITB is to ensure the timely delivery of ballots and programming in order to meet this requirement. To this end, an easy, inexpensive procedure for qualifying local printers to print optical scan ballots will be discussed by the Bidder(s).
- k. In their proposal, the Bidder(s) shall describe their training support capabilities and provide a plan for further optional training that jurisdictions can obtain directly from the bidder.
- l. In their proposal, the Bidder(s) shall describe their ability to partner with the State in using the Department of State's web presence as a communication and instructional medium. Their proposal will also discuss the Bidder(s) ability to actively participate in creating informative communiqués of public interest during the project, and their ability to develop an on-line demonstration and simulation of the new voting equipment as an additional educational tool.

2. Work Plan – Pass/Fail

The written proposal should indicate the Contractor's ability to provide a plan for accomplishing the work. The plan should include a detailed narrative description of how the Contractor will accomplish the objectives and tasks, including a display of time related events.

This section of the proposal will be evaluated using the following criteria:

- a. Methods of status reporting, including examples of types of reports.
- b. Approach to interfaces with county clerks and the clerks of local jurisdictions.
- c. Time estimating procedures.
- d. Internal quality control monitoring approach used to produce deliverables.
- e. Signoff procedures for completion of deliverables and major activities.
- f. Approach to problem identification and resolution.

After several clarifications with all three vendors, it was determined by the JEC that all three companies passed Step II therefore advancing to Step III.

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| Step III-Oral Presentations Pass/Fail |
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Bidders who reached Step II were required to make oral presentations of their proposals to the State. Bidders were also required to demonstrate their equipment to the State.

The Step III requirements are as follows:

EMS Presentation

The purpose of the demonstration will be to familiarize DOS staff with the capabilities of the software. In addition, bidders will provide verification of ITA approval. Such verification shall be provided at the time of the demonstration.

Each presentation shall include:

1. A demonstration of the EMS software and a discussion of its compatibility with the State provided file format in APPENDIX E.
2. A demonstration on ballot formatting utilizing the primary and general election ballots provided.
3. A demonstration on programming of precinct count optical scan tabulators utilizing the primary and general election ballots provided.
4. A demonstration on vote accumulation and reporting capabilities utilizing a download of election results from the memory storage units removed from the two tabulators that were used to process the primary and general election ballots cast during the Oral Presentation.

Tabulator Presentation

1. Each presentation shall include a demonstration of the tabulation of ballots utilizing two separate tabulators that have been programmed to receive the State provided primary and general election ballot. (Note: In meeting the above requirements, all Bidders shall be required to utilize identical primary and general election ballots as provided by the DOS at the pre-bid meeting.)
2. Twenty-five primary and twenty-five general election ballots shall be provided by the bidder for this purpose. A mock vote will be conducted using the test ballots. The results will be hand tabulated and compared to the electronic results.

Each vendor failed its first oral demonstration and had to conduct a second oral demonstration in order to pass Step III. It was determined by the JEC that all three vendors passed Steps I, II, and III. Therefore, all three vendors were considered for Step IV.

Step IV- Price Analysis

After an initial review of the price proposals, it was determined that the price offerings were unreasonable and price negotiations were required. An invitation to enter into price negotiations was extended to all bidders.

Summary by Bidder

In addition to the information indicated below, the attached spreadsheet indicates for each bidder which criteria were met and which were deficient.

1. Diebold Election Systems, Inc. (DESI)

Step I – Mandatory Requirements

Diebold initially took exceptions to the mandatory requirements 1-7 but unconditionally agreed after clarification was requested. Diebold did not provide the complete information as required in Step I but addressed through clarifications. Diebold's proposal also contained additional exceptions to the ITB terms and conditions that were not related to Step I.

Step II –Management Summary

Diebold passed Step II with the following comments:

- The Contractor's understanding of the purpose of this ITB – Diebold did not address this requirement in their proposal.
- Project risks/constraints and approach to overcoming these – Diebold did not address in their proposal and did not understand what the State was requesting. When asked through the clarification process, Diebold's response was vague and did not completely answer the question as it was intended. But the JEC did not see this as a major weakness within the scope of their overall proposal, and agreed to pass them on this requirement.
- Teaming Structure and the role and responsibilities of each teaming partner –Diebold's proposal did not provide the complete information requested but was addressed through the clarification process.
- Training Plan – Diebold's original proposal did not contain a complete training offering for the State, counties, and local jurisdictions. After several attempts to obtain this information through clarifications, the State required all bidders to complete Appendix H – the Training Matrix. Through the clarification and negotiations process, Diebold submitted a training plan that was acceptable to the State.
- Modification Requirements – Diebold included this as one of their exceptions but has agreed with the State through negotiations.

- Ballot Printing and Printer Certification – Diebold’s original proposal did not specifically address the qualification process and the 45 day deadline for ballots. It was addressed through clarifications but Diebold’s explanations did not completely answer the question regarding the 45 day deadline. Adequate detail was provided through the negotiation process.
- Web Presence as a Communication and Instructional Medium – Diebold did not specifically address the State of Michigan and made an incorrect reference to Maryland instead of Michigan on page 45 in their Management Summary.

Step III – Oral Presentations

Diebold passed the Oral Presentation portion of the evaluation process but had to conduct its presentation a second time since the first demonstration was conducted using a version of tabulator firmware that was not yet certified and/or approved by the Department of State Bureau of Elections.

Step IV – Price Negotiations

Diebold refused to sign the “Rules of Engagement” document prior to entering into negotiations. Diebold demanded that the document be altered to reflect the State’s agreement to discuss their exceptions to the ITB terms and conditions. To provide fair and equitable treatment, this option to submit exceptions to the ITB terms and conditions was extended to all bidders. The State submitted a final response to all issues on terms and conditions that were raised by Diebold. Diebold agreed to the State’s response to the exceptions. Through the price negotiation process, Diebold offered favorable cost concessions on its tabulator, EMS, and maintenance costs. Ballot printing costs were reduced but Diebold refused to lower its programming costs.

Overall Quality of Proposal:

Diebold’s Executive summary does not clearly identify requirements of the ITB. Prior experience as listed does not include Michigan or optical scan equipment. It was difficult to identify Diebold’s key personnel in the proposal. The proposal was repetitive and the Executive summary and narrative were almost identical. It was difficult to find information in the proposal. Diebold did provide a detailed response on disability voting systems.

2. Election Systems and Software, Inc. (ES&S)

Step I – Mandatory Requirements

ES&S initially took exceptions to the mandatory requirements 1-7 but unconditionally agreed after clarification was requested. ES&S did not provide the complete information as required in Step I but addressed through

clarifications. ES&S' proposal also contained additional exceptions to the ITB terms and conditions that were not related to Step I.

Step II –Management Summary

ES&S passed Step II with the following comments:

- Teaming Structure and the role and responsibilities of each teaming partner –ES&S' proposal did not provide the complete information requested but was addressed through the clarification process.
- Training Plan – ES&S' original proposal did not contain all the information the State was seeking but through clarifications and further discussion through negotiations ES&S submitted an acceptable training plan in the Training Matrix - Appendix H.
- Modification Requirements – ES&S took exception in their original proposal and later proposed through clarifications: “No additional costs to the State only if modifications for Federal law are both technically feasible and commercially reasonable to perform.”
- Ballot Printing and Printer Certification – ES&S' original proposal did not specifically address the qualification process and the 45 day deadline for ballots. It was addressed through clarifications but ES&S' explanations did not completely answer the question regarding the 45 day deadline. More information was provided through the negotiation process.
- Web Presence as a Communication and Instructional Medium – ES&S did not specifically address the State of Michigan but their programs can be customized.
- Methods of Status Reporting – ES&S was initially non-compliant with this requirement but it addressed through clarifications and negotiations for a threshold of sales over 50 units.
- Approach to Interfaces with County Clerks and Clerks of Local Jurisdictions – ES&S referenced their relationship with the county frequently instead of local jurisdictions. This subject was only discussed in relation to training.

Step III – Oral Presentations

ES&S passed the Oral Presentation portion of the evaluation process but had to conduct its presentation a second time since there was an error in tabulation of the votes during the first demonstration. This was caused by a programming error that was corrected for the second demonstration.

Step IV – Price Negotiations

ES&S initially signed the “Rules of Engagement” document prior to entering into negotiations and unconditionally agreed to the ITB terms and conditions. When the State extended the option to take exceptions to all bidders, ES&S only submitted one exception to the contractual terms and conditions. Through the negotiation process, the State and ES&S came to a mutual agreement on this

exception. ES&S offered favorable cost concessions on their tabulator and maintenance costs while keeping the EMS license fee at \$0. Programming costs were reduced to be more equitable to small jurisdictions but ES&S refused to lower their ballot printing costs.

Overall Quality of Proposal:

ES&S' proposal was well organized, well presented, and easy to read. ES&S clearly addressed all the objectives, tasks, and deliverables of the ITB. ES&S is the only bidder that addressed the project constraints and risks requirement in their proposal as well as thoroughly addressing the statement of the problem.

3. Sequoia Voting Systems, Inc.

Step I – Mandatory Requirements

Sequoia is the only bidder that did not submit exceptions to the ITB terms and conditions. Unconditional agreement has been achieved on Mandatory Requirements 1-6. However, in accordance with Item #7 listed above, Sequoia has been passed with a contingency on obtaining Independent Testing Authority (ITA) approval on BPSII software. Sequoia will not be permitted to sell any equipment or software until ITA approval of BPSII is obtained and can meet the delivery timelines described under Section II-C TASKS. Sequoia did not provide the complete information as required in Step I but addressed through clarifications.

Step II –Management Summary

Sequoia passed Step II with the following comments:

- Performance Capabilities – Sequoia's proposal did not contain a complete response to this requirement but was addressed through clarifications.
- Project risks/constraints and approach to overcoming these – Sequoia did not address in their proposal and did not understand what the State was requesting. When asked through the clarification process, Sequoia's response was vague and did not completely answer the question as it was intended. But the JEC did not see this as a major weakness within the scope of their overall proposal, and agreed to pass them on this requirement.
- Teaming Structure and the role and responsibilities of each teaming partner –Sequoia's proposal did not provide the complete information requested but was addressed through the clarification process.
- Training Plan – Sequoia's original proposal did not contain a complete training offering for the State, counties, and local jurisdictions. After several attempts to obtain this information through clarifications, the State required all bidders to complete Appendix H – the Training Matrix. Through the clarification and negotiations process, Sequoia submitted a training plan that was acceptable to the State.

- Modification Requirements – Sequoia took exception and will charge for significant changes only in Federal law. Software charges are covered by annual maintenance fee that includes upgrades.
- Staff resources required and timeframes for providing these resources. – Sequoia’s original proposal did not provide the complete required information but was addressed through clarifications and included names on the gantt chart they provided.
- Ballot Printing and Printer Certification – Sequoia’s original proposal did not specifically address the qualification process and the 45 day deadline for ballots. It was addressed through clarifications but Sequoia’s explanations did not completely answer the question regarding the 45 day deadline. More information was provided through the negotiation process.
- Web Presence as a Communication and Instructional Medium – Sequoia’s proposal did not completely provide what the State was seeking but it was addressed through clarifications. Sequoia’s website with an on-line demo can include optical scan equipment and software.
- Methods of Status Reporting – This requirement was addressed through clarifications and negotiations for a threshold of sales over 50 units.
- Internal quality control monitoring approach used to produce deliverables- Sequoia did not initially address in proposal but addressed through clarifications.
- Signoff procedures for completion of deliverables and major activities – Sequoia did not initially address in proposal but addressed through clarifications.

Step III – Oral Presentations

Sequoia passed the Oral Presentation portion of the evaluation process but had to conduct their presentation a second time since there was an error in the rotation of a write-in position on the ballot. This resulted in an error in the tabulation of votes during their first demonstration. This was caused by a programming error that was corrected for the second demonstration.

Step IV – Price Negotiations

Sequoia initially signed the “Rules of Engagement” document prior to entering into negotiations and unconditionally agreed to the ITB terms and conditions. When the State extended the option to take exceptions to all bidders, Sequoia submitted two exceptions; one contractual term and condition and one mandatory requirement of the ITB. The State changed the Performance Bond requirements for all bidders through an addendum. But the State denied Sequoia’s request to change the mandatory requirement of ITA approval on BPSII. Sequoia delayed submission of their pricing proposal by demanding the State to change its position on ITA approval of BPSII. When Sequoia did submit its pricing, it contained a contingency on the State removing this mandatory requirement. The State rejected this offer. Sequoia has removed the contingency and has submitted a revised pricing proposal.

Sequoia is not permitted to sell any equipment until ITA approval of BPSII is obtained. The State and Sequoia are still in the price negotiation process and Sequoia has not obtained ITA approval on BPSII. Sequoia is recommended for award for the August and November 2004 elections pending ITA approval on BPSII and an agreement on pricing between the State and Sequoia.

Overall Quality of Proposal:

Sequoia gave good examples of reports produced by the voting equipment in the audit section and provided detailed explanation on warranty procedures. Sequoia's proposal also included a thorough discussion on security. Sequoia's proposal contained continuous page numbers which allowed for easy reference. However, Sequoia's proposal was not well organized and it was difficult to find required information. The original proposal also did not include an executive summary.

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| Award Recommendation |
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Award will be made to the responsive and responsible bidder(s) who offer an acceptable level of performance and cost to the State of Michigan. An acceptable level of performance and cost is determined by adequately meeting the award factors described in Section III-E representing best value for the State of Michigan.

The State further reserves the right to reject any or all bids in whole or part, and to waive any informality or technical defects, if it is determined by the Director of Acquisition Services that the best interest of the State will be served by doing so. In determining an award, qualifications of the bidder, conformity with the specifications of services to be supplied, costs, delivery terms and a Bidder's past performance on State contracts will be considered. The State reserves the right to award to multiple contractors.

All three vendors have passed Steps I, II, and III. Through the price negotiation process, the State has reached an agreement with two vendors, Diebold and ES&S. The State has come to an agreement with Diebold and ES&S on the contractual terms and conditions of the ITB as well as the meeting notes from negotiations. Negotiated prices from Diebold and ES&S were deemed favorable; therefore the JEC is recommending Diebold and ES&S for award for the 2004 election cycle.

Sequoia is not permitted to sell any equipment until mandatory ITA approval of BPSII is obtained. The State and Sequoia are still in the price negotiation process and Sequoia has not obtained ITA approval on BPSII. Sequoia is recommended

for award for the August and November 2004 elections pending ITA approval on BPSII and an agreement on pricing between the State and Sequoia.

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| Evaluation Summary |
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| Company Name | Step I | Step II | Step III | Step IV |
|---------------------|---------------|----------------|-----------------|--|
| Diebold | P | P | P | P |
| ES&S | P | P | P | P |
| Sequoia* | P* | P | P | P (Pending price negotiations and ITA approval on BPSII.) |

*Ability to sell equipment and software contingent upon ITA approval of BPSII and meeting deadlines in Section II-C TASKS

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| Pricing Summary |
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| Company Name | Total Mandatory Items Costs | Post Warranty Annual Maintenance Costs (5 yr avg) | Total Costs |
|---------------------|------------------------------------|--|---------------------|
| Diebold | \$30, 408,788 | \$1,198,991 | \$31,607,779 |
| ES&S | \$29,720,600 | \$1,216,800 | \$30,937,400 |
| Sequoia | TBD | TBD | TBD |

Attachment
Evaluation Spreadsheet
Summary of Negotiated Prices

J.E.C. Members Signatures:

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| _____ Signature | _____ Name | _____ Date |
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